

ORDINANCE NO. 11-01

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AMENDING CHAPTER 6, ALCOHOLIC BEVERAGES, ARTICLE III REGULATIONS, AND IN PARTICULAR, REVISING HIALEAH CODE § 6-66 ENTITLED "DISTANCE SEPARATION REQUIREMENTS; RESTRICTIONS" TO PROVIDE REGULATIONS THAT ALLOW FOR THE SALE AND CONSUMPTION OF BEER AND WINE AT A MOVIE THEATER ENTERTAINMENT COMPLEX HAVING A MINIMUM OF 10 THEATERS SHOWING AT LEAST 6 DIFFERENT MOVIES AT THE SAME TIME WITH A MINIMUM SEATING CAPACITY OF 80 FIXED SEATS FOR EACH THEATER AND A TOTAL OF 1,500 SEATS; PROVIDE FOR LIMITED HOURS FOR THE SALE OF BEER AND WINE; PROVIDE FOR A CITY-APPROVED PLAN TO PREVENT UNDERAGE CONSUMPTION OF BEER AND WINE ON THE PREMISES; PROVIDE THAT AT LEAST 80% OF REVENUE IS DERIVED FROM TICKET SALES, ENTERTAINMENT AND FOOD; AND TO CHANGE BUSINESS TAX RECEIPT NUMBERS TO CONFORM TO THE CURRENT NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM RECENTLY ADOPTED BY THE CITY AND TO DELETE PROVISIONS RELATING TO OUTMODED, NONEXISTENT USES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, this ordinance is intended in general to benefit the health, safety, public welfare and proper administration of the government of the City and its residents; and

WHEREAS, the primary purpose of this ordinance is to allow for a movie theater entertainment complex to sell beer and wine in connection with the operation of movie

theaters, with a minimum of 10 theaters showing at least 6 different movies at the same time, having at least 80 fixed seats in each theater and a minimum total of 1,500 fixed seats subject to regulation of hours, approval and enforcement of a prevention plan for underage drinking, maintenance of accurate sales records and a minimum of 80% of the operating revenue derived from the combined sale of movie tickets, food and revenues derived from entertainment venues and activities; and

WHEREAS, in the event that a movie theater entertainment complex owner or operator desires to operate a full-service restaurant, such restaurant must be separately licensed and otherwise comply with all state license and city regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 6 entitled "Alcoholic Beverages", Article III. Regulations, of the Code of Ordinances of the City of Hialeah, Florida, by revising Hialeah Code § 6-66 entitled "Distance separation requirements; restrictions", is hereby amended to read as follows:

Chapter 6

ALCOHOLIC BEVERAGES

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ARTICLE III. REGULATIONS.

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Sec. 6-66. Distance separation requirements; restrictions.

(a) The distance separation requirements of alcoholic beverage establishments from churches, schools, city parks and recreational areas, residential uses and similar uses shall be as follows:

| | | | Distances (in linear feet) | | | |
|-----------------------|-----------------------|--------|----------------------------|-------------------|--------------------|------------------------|
| License Type (NAICS) | Type of Establishment | Zoning | School, Church | Other Similar Use | Residential, Parks | State License Required |

| | | | | | | |
|-------------------|--|-----------------------------|-------------------------|-------------|-------------|---|
| 722110 722110A | Restaurant | C-1, C-2, C-3 CR, CBD | No distance requirement | | | 1-COP 2-COP, 4-COP- SRX |
| <u>722410</u> | Bars | C-3 | 500 | 500 | 500 | 2 COP, 4 COP |
| 722410A | Nightclubs | C-3 | 1,000 | 1,000 | 500 | 4 COP |
| 722320B | Banquet halls providing beer, wine or alcoholic beverages as part of event | C-2, C3, CBD | No distance requirement | | | 2 COP, 4 COP- SRX if required 4 COP |
| 445310 | Liquor stores selling alcoholic beverages (excluding stores selling beer and/or wine only) | | None | 1,000 | None | 3PS |
| <u>512131</u> | <u>Movie theater entertainment complex</u> | <u>C-2, CBD</u> | <u>None</u> | <u>None</u> | <u>None</u> | <u>2-COP</u> |

(b) Restaurants, holding a 722110A series occupational license, shall not sell, offer for sale, deliver or serve alcoholic beverages, wine, and beer for consumption or use on the premises, except as follows:

(1) For the sale and/or on-premises consumption of wine and/or beer, the holder of a 722110A series occupational license to operate the restaurant (referred to as the "licensee") must obtain a state 1-COP or 2-COP license and comply with the following:

a. The sale of beer and/or wine must be incidental to the sale and consumption of food. The restaurant must derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. The required percentage must be maintained on a daily basis. The restaurant operator shall not deflate the price of beer and wine or inflate the price of the served meal from what would be the regular price for the beer, wine, or meal served by a similar establishment in the city as a means or method of meeting the minimum required percentage of gross revenue required by this subpart.

- b. Records of all purchases and gross sales of food and non-alcoholic beverages must be maintained separately from records of all purchases and gross sales of beer and wine.
- c. The records must be clear and legible and must be kept on the premises. The restaurant operator must immediately comply with any requests by the city to audit or inspect the records for purposes of verifying compliance with the required gross revenue percentage.
- d. No beer or wine shall be sold between the hours of 1:00 a.m. and 8:00 a.m. on any day of the week. Under no circumstance shall beer or wine be sold after the hours of serving food have elapsed.
- e. The restaurant must serve full-course meals prepared, served and sold daily for immediate consumption on the premises at any time when open for business, from a kitchen or facility inspected and approved by the division of hotels and restaurants of the state department of business and professional regulation or the state department of agriculture and consumer services. Full kitchen facilities shall mean facilities containing commercial grade burners, ovens, range hoods and refrigeration units of such size and capacity to accommodate the seating of the restaurant. Meals prepared off the premises, snacks, prepackaged foods or sandwiches will not be considered full-course meals for purposes of this subsection.
- f. The restaurant must be equipped to serve 30 people full-course meals at tables, having 30 chairs, excluding barstools or counter stools.
- g. The restaurant must have written menus readily available to patrons. A majority of the food listed in the menu shall be available for consumption while the business is open.
- h. The restaurant must have more than 850 square feet of service area or a combination of a full-service operating kitchen area larger than 500 square feet with a service area of no less than 700 square feet.
- i. The restaurant operator shall not circumvent the intent of this subsection by an artifice or scheme.
- j. There shall be compliance with this Code, including but not limited to requirements of article V of chapter 18 and article II of chapter 86.
- k. The restaurant operator shall not employ B-girls, waitresses, or hostesses as companions to male customers or otherwise to entice, encourage or lure male customers to purchase multiple drinks by sitting at the table or other seating area

with male customers with conversation, touching, sexual innuendo or the promise of sexual favors or attention.

(2) For sale and/or on-premises consumption of alcoholic beverages, the 722110A series licensee must obtain a state 4-COP-SRX license and must comply with the following.

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(c) Movie theatre entertainment complexes shall not sell, offer for sale, deliver or serve wine and beer for consumption or use on the premises, except as follows:

(1) For the sale and/or on-premises consumption of wine and beer, the movie theater entertainment complex business owner or operator must obtain a state 2-COP license and comply with the following requirements:

a. The sale of beer and wine must be in conjunction with the offer to sell food, candy or other confections, or other refreshments such as soda, bottled water and juice, and incidental to the sale of movie tickets, food and revenues derived from entertainment venues or activities, exclusive of the sale of beer and wine. The movie theatre entertainment complex shall derive at least 80 percent of its revenue from the combined sale of movie tickets, food and revenues derived from entertainment venues and activities. The required percentage must be maintained on an average monthly basis. The owner or operator may not deflate the price of beer and wine or inflate the price of food items, movie ticket or price of the entertainment venue or activity intended as a means or method of meeting the minimum required percentage of gross revenue required by this subpart.

b. Movie theater entertainment complex shall mean a movie theater that has a minimum of 10 theaters showing at least six different movies or films at the same time having at least 80 fixed seats for each theater and a minimum of fixed 1,500 seats for all theaters in total.

c. No beer or wine shall be sold between the hours of 1:00 a.m. and 12:00 p.m. (noon) on any day of the week. Patrons shall be limited to no more than 3 servings of beer and wine.

d. Records of all purchases and gross sales of movie tickets, food and non-alcoholic refreshments, entertainment activities and the sale of beer and wine shall be maintained as separately and subject to review by the city in order to determine the minimum threshold requirements provided in paragraph b herein.

e. The business owner or operator shall provide and enforce a regulatory compliance and identification check system approved by the city, such approval shall not be unreasonably withheld, that provide for beer and wine

served in clear plastic drink ware, usher supervision, point-of-sale identification check, wristband and ultra-violet hand-stamp applications, additional patron checks prior to entering the theater auditoriums, responsible vendor training and any other methods to prevent underage consumption of beer and wine.

(ed) *Presumption of noncompliance with the provisions of section 6-66(b)(1) or 6-66(b)(2) hereof where applicable.*

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(de) Bars that do not serve food will only be permitted where a C-3 extended liberal commercial zoning exists. These establishments will not be permitted to have entertainment or to allow dancing. When serving food in addition to beverages, a license must obtain a ~~5812-occupational license~~ 722110A business tax receipt in addition to the ~~5812-license~~ 722410 business tax receipt. To be issued a ~~5813-occupational license~~ 722410 business tax receipt, the licensee holder of the business tax receipt must have a valid state license.

(ef) A ~~5813A-license~~ 722410A business tax receipt (nightclubs, cabarets, etc.) is regulated by Article V of chapter 18 and article II of chapter 86 and any and all other sections of this Code or applicable city ordinances.

(f) ~~An occupational license of the type 7912(D) (nonalcoholic discotheques) shall comply with all the requirements for a 5813A license, except for the sale of alcoholic beverages which will not be permitted.~~

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Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 6: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

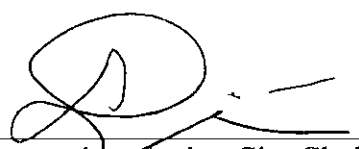
PASSED AND ADOPTED this 8th day of February, 2011

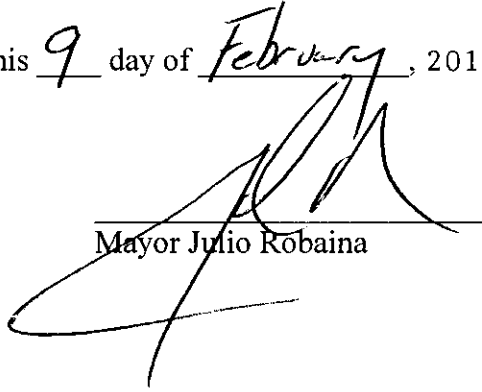
THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Carlos Hernandez
Council President

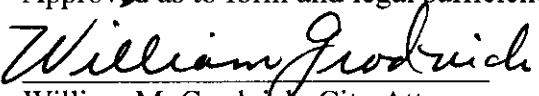
Attest:

Approved on this 9 day of February, 2011


David Concepcion, Acting City Clerk


Mayor Julio Robaina

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

~~Strike through~~ indicates deletion. Underline indicates addition.